A Training for Public Officials on

The Alabama Open Meetings Act
(Act No. 2005-40)
"The Sunshine Law"
History of Alabama’s “Sunshine Law”
History of Sunshine Law:

- Open meetings of some entities required before Sunshine Laws.
- Alabama had one of the oldest and simplest “sunshine laws” in the United States.
- First proposed in 1915 by J. Miller Bonner, a Senator from Camden, while in his first term in the Alabama legislature.
- According to Bonner, the law arose out of distrust for “secret societies” that prevailed at the turn of the century.
Bonner was quoted in a 1940 edition of The Birmingham News as saying:

“I got that [Sunshine] law through my first trip to the Legislature back in 1915. And I’m still proud of it. [No incident] in particular [caused its introduction]. I’ve always been for the sunlight shining on the public’s business, for the open door, for taking the hood off the Klan. If it’s the people’s business they’ve got a right to know what’s going on. Open meetings and a free press assure that.”
Bonner later admitted that the biggest mistake he made during the legislative process was to compromise and agree to the “character and good name” exception.

He acknowledged in 1940 that the “exception” had already been abused many times.
No Criminal Prosecutions in 90 Years

- Sunshine law was criminal statute.
- Violation was misdemeanor with $500 fine.
- Proof beyond a reasonable doubt.
- No record of prosecution in history of its existence.
Major Legal Developments Which Weakened Sunshine Law:

- Shelby County Medical Center:
  - Ruled that votes could be taken by secret ballot.

- Auburn BOT Opinion:
  - Limited applicability of Sunshine Law to quorums of entire body.
  - Expanded litigation exception to threatened litigation.

- Selma Water Works case ruled water boards were not subject to Sunshine Law.
Alabama Press Association strongly supported re-write of Open Meetings Law in February 2005.

Sought new law that would allow additional exemptions in exchange for tightening current loopholes which have rendered the law ineffective in light of recent court rulings.
“OMA 101”
Responsibilities under Alabama’s Open Meetings Act
WARNING!!!

This Manual / Presentation is *not* the law.
- It cannot cover every situation

If you have a question . . .
- Call your legal counsel or the Attorney General’s Office
- [www.ago.alabama.gov](http://www.ago.alabama.gov) or [www.ago.state.al.us](http://www.ago.state.al.us)
Alabama’s Open Meetings Act

1. A Quick Overview

2. Effective Date: October 1, 2005

See more details in the OMA Manual, Page 5
Changes and Additions
Under Alabama’s Open Meetings Act

- Committees and Subcommittees
- Job Performance & Character / Good Name
- No Secret Ballots
- Quorum – newly elected officials
- Notice

See more details in the OMA Manual, Page 6
Changes and Additions
Under Alabama’s Open Meetings Act

- Recording
- Electronic Communications
- Open Taping
- Civil Penalties & Immunity

See more details in the OMA Manual, Page 6-7
THE LAW

“The Deliberative Process of governmental bodies shall be open to the public during meetings (as defined by this Act). Except for executive sessions … or as otherwise expressly provided by other federal or state statutes, all meetings of a governmental body shall be open to the public and no meetings of a governmental body may be held without providing notice (as defined in this Act).

“No executive sessions are required by this Act to be held under any circumstances. Electronic communications shall not be utilized to circumvent any provision of this Act.”

See more details in the OMA Manual, Page 7
Simplified Aspects of the Law

All meetings in which governmental bodies meet to deliberate must be open to the public.

- Under the OMA, the only exception to an Open Meeting is an “Executive Session.”

- No meeting – even an emergency meeting – can be properly held under the OMA without proper notice.

- Electronic communications, such as teleconferencing, cannot be used to circumvent the OMA.

See more details in the OMA Manual, Page 7
**Important Definitions:**

**Meeting – Section 2(6)a1**

1. Pre-arranged gathering of a quorum which is set by law or operation of law

2. Pre-arranged gathering of a quorum to exercise powers to approve the expenditures of public funds

3. Gathering to deliberate specific matters that, at the time of the exchange, the participating members expect to come up at a later date

See more details in the OMA Manual, Page 8-11
**Important Definitions:**

**Deliberation**

Any exchange of info or ideas that is intended to arrive at or influence a decision.

Applies to current discussions or discussions about future issues.

See more details in the OMA Manual, Page 8-11
**Important Definitions:**

**Quorum**

“A Majority of the Voting Members”

*Includes Newly Elected or Appointed Members when Counting toward a Meeting*

*Exceptions:*

1. Required by Law
2. Exercise to possess or spend $$

(Essentially, Ad hoc meetings)

See more details in the OMA Manual, Page 8-11
Before the Meeting:

GIVE NOTICE

Generally, all governmental bodies that come under the OMA must give notice.

See more details in the OMA Manual, Page 11-16
Notice Exceptions:

- Advisory Boards that are
  1) created solely to make recommendations on public policy issues and
  2) are composed of persons not compensated with public funds

  County Commissions (and subcommittees) – must follow current law under Section 11-3-8

See more details in the OMA Manual, Page 11-12
Notice Exceptions:

- Quasi Judicial or Contested Case Hearings
  An executive body issuing judicial decisions for the body
  Example: State Bar’s Removal of professional license not open, so no notice required

Non-Meetings under the OMA
- Social Gatherings
- Conventions, Training Programs
- Media Events
- Meetings with State or Fed. Officials to report/seek info or seek support for important issues to the body

See more details in the OMA Manual, Page 11-12
What must be contained in a Notice?

- Time, date and place of meeting
  -- Always

Preliminary Agendum
-- When available, must be placed with notice
-- If none, give the “nature & purpose” of the meeting

See more details in the OMA Manual, Page 13
When Is a Notice Required?

7 Day Notice

All pre-arranged meetings required by law to be held at a certain time or place.

(§2(6)a.1 meetings)

See more details in the OMA Manual, Page 13
When Is a Notice Required?

1 Day Notice

Pre-arranged body meetings to exercise the body’s powers to possess or approve the expenditure of public funds.  
§2(6)a.2 meetings

See more details in the OMA Manual, Page 13
When Is a Notice Required?

1 Day Notice

All meetings to deliberate matters the body members expect to come before the body at a later date.

(§2(6)a.3 Meetings)


See more details in the OMA Manual, Page 13
When Is a Notice Required?

1 Hour Notice

Emergency meetings and Resignations.

*Emergencies only occur when necessary to avoid
1) personal physical injury or 2) damage to property*

See more details in the OMA Manual, Page 13-14
How Must Notice Be Given?

Governmental Bodies with Statewide Jurisdiction

Required: Submit notice to the Secretary of State to post on Secretary of State website

Optional: “In additional manner” desired by the body

See more details in the OMA Manual, Page 14-15
HOW MUST NOTICE BE GIVEN?

Municipal Government Bodies

Required: “On a bulletin board at a place convenient to the public at city hall”

Exception: Municipal corporations may place on a public bulletin board in corp.’s principal office

See more details in the OMA Manual, Page 15
How Must Notice Be Given?

Local School Boards

Required: On a bulletin board, convenient to the public, in the board’s central admin. office

See more details in the OMA Manual, Page 15
HOW MUST NOTICE BE GIVEN?

County Commissions
Code of Alabama, Section 11-3-8
1. Establish a regular meeting schedule at the first meeting
2. Publish the schedule in the County Courthouse
3. Forward to all requesting news media

Special Meetings: After a special vote, follow the above at least 5 days in advance
(**Refer to the manual**)

See more details in the OMA Manual, Page 15-16
HOW MUST NOTICE BE GIVEN?

All Other Governmental Bodies

Required: “In a reasonable location” or using “a reasonable method that is convenient to the public”

Changing methods: Allowed if voted on and announced in a prior open meeting

See more details in the OMA Manual, Page 15
Direct Notification

A government body is **required** to directly notify registered members of the public or media “if practicable”

**Contents:** Time, Place, Nature, Purpose

* The body sets the “reasonable” rules for notification
* The requesting party bears the costs
* Any reasonable method is acceptable

See more details in the OMA Manual, Page 16
During the Meeting:

Procedure

Adopted Rules of Parliamentary Procedure
(Left to the choice of the body)

See more details in the OMA Manual, Page 17
During the Meeting:

Voting

All votes must be open “unless otherwise permitted by law”

*No Secret Ballots: Secret ballots are strictly forbidden. Thus, individual voice voting is preferred.

*No voting in Executive Session: Even if the body can enter Ex.Session, all votes must be conducted openly.

See more details in the OMA Manual, Page 17-18
**During the Meeting:**

**Recording by the Body**

The body must record:

1) Date, Time, Place
2) Members present and absent
3) Action taken during the meeting

*Not required:* Executive Session actions or video/audio recordings

See more details in the OMA Manual, Page 18-19
During the Meeting:

Recording by the Media & Public

An open meeting – not an executive session -- may be *openly* recorded by Tape recorder, Video Camera, or Photograph

The body can adopt rules to ensure the recording does not “disrupt the conduct of the meeting”

See more details in the OMA Manual, Page 19
Executive Sessions

See more details in the OMA Manual, Page 19-20
Executive Session

Calling an Executive Session

1. Convene an open meeting
2. Motion – Stating the Reason for Exec. Session
3. Written or Oral Declaration (if necessary)
4. Open Voting – Must be recorded
5. Statement Concerning Reconvocation

If and when (approximately)

See more details in the OMA Manual, Page 20-21
Executive Session - Reasons


Easy Rule: All of the above – except Job Performance – is always proper grounds for an executive session for all individuals. “Job performance” may be, depending on the individual being discussed.

Note: All discussion or salaries, compensation and other “job benefits” cannot be held in an executive session.

See more details in the OMA Manual, Page 21-23
Executive Session - Reasons

“Job Performance”

Observed conduct or actions of a public employee or official while on the job in furtherance of his or her duties

Includes: 1) Whether the person is meeting, exceeding, or failing to meet job requirements
2) Whether formal employment actions should be taken against the individual by the body

See more details in the OMA Manual, Page 21-23
Executive Session - Reasons

“Job Performance”

If the action meets these requirements, then the deliberation must be public if the person is

1. An elected or appointed official
2. An appointed member of a state or local board or commission
3. A public employee who must file a statement of economic interest under Section 36-25-14

   24 named officials + $50,000 rule

See more details in the OMA Manual, Page 21-23
Executive Session - Reasons

“Job Performance” vs. “General Reputation and Character”

GR&C: Characteristics or actions of a person directly involving good or bad ethical conduct, moral turpitude, or suspected criminal activity

**Always allowed in executive session if it does not also meet the “job performance” definition

See more details in the OMA Manual, Page 21-23
Executive Session - Reasons

2. Formal Charges or Complaints Against an Individual or Legal Entity

- Always allowed if “formal written complaints or charges” levied against . . .
  - A public employee
  - A student in public school or college
  - An individual, corporation, partnership, or other legal entity subject to the body’s regulation

See more details in the OMA Manual, Page 23
Executive Session - Reasons

3. Discussions with the Body’s Attorney

Proper Executive Discussions

- Pending Litigation
- Likely litigation if proposed course of action is taken
- Mediator/Arbitrator: Any litigation or decision concerning matters in the body’s jurisdiction

Deliberation After Advice

After receiving the advice, the body must reconvene and openly discuss the course of action

Certification Before Entering Executive Session

A licensed AL attorney must give a written or oral declaration that the exception is applicable

See more details in the OMA Manual, Page 23-24
Executive Session - Reasons

4. Security Plans and Measures

All of the following are subject to executive session:

1. Security plans, procedures, methods, systems
2. Other security infrastructures (including critical and critical energy like utility companies)
   - This matches the AL Homeland Security Act

Required before entering:

1. Conclusion that open discussion “could reasonably be expected to be detrimental to public safety or welfare”
2. Notice to operators and owners of critical infrastructures

See more details in the OMA Manual, Page 24-25
Executive Session - Reasons

5. Criminal Investigation & Identity of Undercover Agent or Informant

A. Any discussion that might disclose the identity of undercover agents
B. Criminal investigations of non-public officials

Required for both: Pre-exec. session certification that law enforcement would be imperiled by open discussions from 1) the AG, 2) the local DA, or 3) law enforcement that can make an arrest

See more details in the OMA Manual, Page 25-26
Executive Session - Reasons

6. Negotiations to Buy / Sell / Lease Real Property

Proper for Executive Session:
- Consideration body is willing to pay or accept

Improper for Executive Session:
- The material terms of the contract, before it is executed

Exceptions to Executive Session
- Any body member has personal interest in the transaction
- A condemnation action has been filed to acquire the property

See more details in the OMA Manual, Page 26
Executive Session – Reasons

7. Preliminary Negotiations in Trade Competition

Proper if the body is competing against
- Private individuals or entities
- Other AL gov’t bodies
- Other states or foreign nations

Certification required before entering Ex.Session
A. Open discussion would have detrimental impact on body’s negotiating position
B. Open discussion would have detrimental impact on location, retention, or expansion of employee or business entity in the area served by the body
C. Open discussion would disclose info protected by the AL Trade Secrets Act

** Certification must come from person involved in recruitment effort or who has personal knowledge that matters will implicate protected trade secrets

See more details in the OMA Manual, Page 26-27
8. **Negotiations between the Body and a Group of Public Employees**

Basically, labor negotiations can be held in executive session

**Certification:** Must indicate that an open discussion would have a detrimental impact on body’s “negotiation position”

See more details in the OMA Manual, Page 27
Executive Session - Reasons

9. Discuss and Vote Upon a Contested Case Hearing

Proper for executive session:

1. Discuss and deliberate evidence from public or contested case hearing
2. Vote on outcome if body acting in “quasi-judicial role”

Required either that:

1. Vote in open, or
2. The body must issue a written decision which can be reviewed by any person/body able to hear the appeal

See more details in the OMA Manual, Page 27-28
Executive Session – Reasons

10. Non-OMA Reasons

“Otherwise Expressly Provided for by Law”

Suggested:
1) Openly vote for executive session
2) If possible, state the reason
3) Don’t vote in Exec.Session unless required by law

Ex: Board of Pardon and Paroles must deliberate and vote openly, but discuss an inmate’s files in private

See more details in the OMA Manual, Page 28-29
After The Meeting:

Suggested Steps:

Step # 1: **Public Record** of the Open Meeting.
*The body must maintain and publish the minutes it is required to take during the meeting. They must be published “as soon as practicable after approval.”

Step # 2: Know and Post Future Notice for next meeting.

See more details in the OMA Manual, Page 29
Enforcing the O.M.A.

Viable Civil Actions

1. Disregarding proper notice requirements
2. Disregarding OMA provisions during an open meeting
3. Voting to enter executive session, then discussing matters in executive session not openly voted upon before entering
4. Any other intentional OMA violation

Ex: Holding a secret meeting

See more details in the OMA Manual, Page 30
How to Raise a Civil Claim:

**When:** Within 60 days of reason to know & 2 years of actionable conduct

**Who:** Any Alabama citizen, media organization, the local District Attorney, or the Attorney General

- Not: Another member of the body

**Where:** In the county of the body’s principle office

**What:** The complaint must contain

- One of the 4 grounds for legal action
- All members present at the non-conforming meeting
- Verification by the plaintiff that the allegations are true to the best of his knowledge, info, and belief

See more details in the OMA Manual, Page 30-31
RESPONDING TO THE CIVIL COMPLAINT:

≠ Initial Response

- Within 7 days, members of the body must file the initial response

- It should contain a preliminary explanation as to why the member(s) did or did not commit the alleged violation

See more details in the OMA Manual, Page 31
The Preliminary Hearing:

- When: within 10 days of the initial response or 17 days of the complaint

- Plaintiff must establish
  - The meeting occurred
  - Each named member was present
  - Substantial evidence exists to prove the alleged violation occurred

- If met, the judge sets a discovery plan and a date for a hearing on the merits

See more details in the OMA Manual, Page 31
**MERITS HEARING:**

- **If during an open meeting or notice**
  - Plaintiff must prove the allegation

- **If during an executive session**
  - Members must prove their discussions were limited to the voted upon reasons for the session
  - The court will review all executive session materials *in camera*

- **Final Order**
  - Unless otherwise agreed upon, the court must issue a ruling in 60 days

*See more details in the OMA Manual, Page 31-32*
Possible Penalties / Remedies

- **Financial Penalties**
  - Maximum: Lesser of $1000 or ½ of monthly salary for serving on the body
  - The gov’t cannot pay the fine, but can pay attorney fees

- **Temp. Restraining Orders**
  - Can be entered before the final order

- **Invalidate the Meeting**
  - Complaint filed w/in 21 days of action being made public
  - Action was intentional
  - No harm to Third Party who relied on the results of the meeting

See more details in the OMA Manual, Page 32-33
Body members are immune from any liability for any statement during the meeting – relating to an action pending before the body – if the meeting was open and conforms to the OMA.
FINAL THOUGHTS

- If a situation is unclear . . .
  - Err on the side of openness
  - If possible, contact your legal advisor or the Attorney General for an opinion before acting
Attorney General’s Opinions:

Section 36-15-1 of the Code of Alabama imposes certain enumerated duties on the Attorney General. These include giving his opinion, in writing, on questions of law connected with the interests of the state and state departments and to certain enumerated local, county, and municipal officials and bodies.
Who Can Request An Attorney General’s Opinion:

Any officer, governing body, department or agency of the State, a county, or municipality. Opinion requests should be submitted in writing. If the opinion request is submitted by a board or governing body, a resolution from the board or governing body should also be included.

The Attorney General does not address issues concerning matters currently in litigation. The Attorney General does not address moot, private, or personal questions in which the state, county, or public is not materially or primarily interested. The Attorney General does not address the constitutionality of statutes.
Where to find existing Attorney General’s Opinions:

Opinions are available online at http://www.ago.state.al.us/opinion_search.cfm or copies of opinions are distributed at no charge upon request to the Alabama Attorney General’s Office, Opinions Division.
HOW TO FIND OUT MORE:

Alabama Attorney General’s Office
Opinions Division
(334) 242-7403
http://www.ago.state.al.us/opinion.cfm
WHERE TO FIND:
The Alabama Open Meeting Act

The Act that makes the OMA law is Act No. 2005-40.

A full version of Act No. 2005-40 can be obtained on-line through the Alabama Secretary of State’s website at

http://arc-sos.state.al.us/CGI/sosact02.mbr/input
WHERE TO FIND:
The Alabama Open Meeting Act 2005 Manual for Public Officials

The Manual is available in a downloadable PDF version through the following website:
Alabama Attorney General’s Office

http://www.ago.state.al.us/documents/open_meeting.pdf
How to Contact:

Alabama Attorney General’s Office
11 South Union Street
Montgomery, Alabama  36130
(334) 242-7300

www.ago.alabama.gov  or  www.ago.state.al.us